

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**

7-03-14  
04:59 PM

Order Instituting Rulemaking to consider the adoption of a General Order and procedures to implement the Digital Infrastructure and Video Competition Act of 2006

Rulemaking No. 06-10-005  
(Filed October 5, 2006)

**PETITION OF GOOGLE FIBER INC. FOR MODIFICATION TO CLARIFY  
DECISION 07-03-014 ADOPTING A GENERAL ORDER  
AND PROCEDURES TO IMPLEMENT THE DIGITAL INFRASTRUCTURE  
AND VIDEO COMPETITION ACT OF 2006**

Austin Schlick  
Megan Anne Stull  
Google Inc.  
25 Massachusetts Avenue NW  
Ninth Floor  
Washington, DC 20001

Anita Taff-Rice  
iCommLaw  
1547 Palos Verdes  
Suite 298  
Walnut Creek, CA 94597  
(415) 699-7885  
anita@icommlaw.com

*Attorney for Google Fiber Inc.*

July 3, 2014

Google Fiber Inc. (“Google Fiber”) requests modification and clarification of Decision 07-03-014 (“Decision” or “D.07-03-014”),<sup>1</sup> which implements the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”).<sup>2</sup> The Commission should clarify that *all* video service providers that have been issued state franchises pursuant to DIVCA have the same nondiscriminatory access to poles, ducts, conduits, and rights-of-way (“ROW”). In particular, those rights are not limited to cable corporations that hold state video franchises under DIVCA. This clarification is necessary to “create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another”<sup>3</sup> and to promote “[w]idespread adoption and use of broadband Internet services[,]” which is a “primary goal of the State of California.”<sup>4</sup>

#### **I. The Commission Can Modify a Final Decision.**

Rule 16.4(a) of the Rules of Practice and Procedure allows a party to petition this Commission to modify or clarify an issued decision.<sup>5</sup> Such petition must justify the requested relief and propose specific wording to achieve the requested modification.<sup>6</sup> Google Fiber explains in Section II and in the accompanying Declaration of John Toccalino that modification of D.07-03-014 is warranted to ensure that all state video franchise holders have equal access to

---

<sup>1</sup> See *Rulemaking for Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006*, Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006, Decision No. 07-03-014 (2007), available at [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/65225.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/65225.PDF) (“D.07-03-014”).

<sup>2</sup> See generally Cal. Pub. Util. Code §§ 5800-5970.

<sup>3</sup> *Id.* § 5810(a)(2)(A).

<sup>4</sup> California Public Utility Commission, *California Broadband Report: A Summary of Broadband Availability and Adoption in California as of June 30, 2011*, Sept. 2012, at 1, available at [http://www.cpuc.ca.gov/NR/rdonlyres/7D2EFC43-A4E3-46CE-BE3B-18E765CF4D08/0/California\\_Broadband\\_Report\\_June\\_2011\\_CPUCmmCLEAN.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/7D2EFC43-A4E3-46CE-BE3B-18E765CF4D08/0/California_Broadband_Report_June_2011_CPUCmmCLEAN.pdf).

<sup>5</sup> See California Public Utility Commission Rules of Practice and Procedure, Rule 16.4, available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K380/89380172.PDF> (“Rules of Practice and Procedure”).

<sup>6</sup> *Id.* at Rule 16.4(b).

utility infrastructure to attach their facilities. Google Fiber is a franchised video service provider offering multichannel video service and symmetrical gigabit broadband connections in Provo, Utah, and the Kansas City area. Google Fiber also is preparing to launch service in Austin, Texas, and is exploring offering service in an additional 34 communities located in nine metropolitan areas across the country. Mountain View, Palo Alto, San Jose, Santa Clara, and Sunnyvale, California, are among those communities.<sup>7</sup> In deploying its networks, Google Fiber has experienced first-hand the difficulty of building a broadband network without certain and predictable access to infrastructure, most notably attachments to utility poles.

A petition for modification may be filed more than a year after the effective date of the decision when the petitioner explains why the petition could not have been brought within the one-year timeframe.<sup>8</sup> As Google Fiber explains in Section III and in the Declaration of John Tocalino, the changed circumstances giving rise to this petition could not have been presented within one year of the effective date of the Decision.

## **II. The Commission Should Modify D.07-03-014, Consistent with DIVCA.**

In passing DIVCA, the Legislature sought to increase competition in the “cable and video service sector,” provide “consumers with more choice” and “lower prices,” and accelerate the “deployment of new communication and broadband technologies” to benefit California’s economy.<sup>9</sup> To create a “fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another,”<sup>10</sup> DIVCA established a uniform regulatory framework for video service providers, including a single statewide franchising system.

---

<sup>7</sup> See The Future of Fiber, available at <https://fiber.google.com/newcities/>.

<sup>8</sup> See Rules of Practice and Procedure, Rule 16.4(d).

<sup>9</sup> See Cal. Pub. Util. Code § 5810(a)(1)(B).

<sup>10</sup> See *id.* § 5810(a)(2)(A).

Despite the Legislature’s efforts, however, regulatory disparities remain. In particular, unlike cable operators, non-cable video service providers lack access at reasonable and predictable rates and terms to essential poles, ducts, conduits, and ROW owned by incumbent local exchange carriers (“ILECs”) and electric utilities.<sup>11</sup> Uncertainties surrounding access to this infrastructure impede the rapid introduction of advanced video and broadband services, which are “critical to social and economic development” in California.<sup>12</sup> The Commission should rectify this disparity by clarifying that all state-franchised video service providers have predictable access to poles, ducts, conduits, and ROW at the same rates and under the same terms.

**A. The Commission Consistently Has Facilitated Competitive Access to Utility Poles and Other Infrastructure.**

California has long overseen attachments to structures in ROW. Section 761 of the Public Utilities Code confers authority upon the Commission to regulate “public utilities” and “any commodity of the character furnished or supplied by any public utility.”<sup>13</sup> In 1980, the Legislature enacted Section 767.5 of the Public Utilities Code, expanding the definition of “public utilities” to include entities that own or control space on support structures that are “used or useful, in whole or in part, for wire communication” by cable television corporations, and defining the provision of such pole space as a “public utility service.”<sup>14</sup> In 1994, with the enactment of Section 767.7 of the Public Utilities Code, the Legislature required that public

---

<sup>11</sup> See Declaration of John Tocalino ¶¶ 3–4, 6. (“Tocalino Declaration”). Courts have recognized the competitive importance of access to infrastructure. See, e.g., *Am. Elec. Power Serv. Corp. v. Fed. Comm’n Comm’n*, 708 F.3d 183, 190 (D.C. Cir. 2013) (noting, in upholding FCC pole-access rules, that “artificial, non-cost-based differences in the prices of inputs among competitors are bound to distort competition, handicapping the disfavored competitors and at the margin causing market share and capital to flow to less efficient firms”).

<sup>12</sup> See D.07-03-014 at 5; see also Tocalino Declaration ¶¶ 3–4.

<sup>13</sup> Cal. Pub. Util. Code § 761.

<sup>14</sup> *Id.* § 767.5(a)(1), (b).

utilities be “fairly compensated” for installation of fiber optic cable on their infrastructure located in ROW and recognized that pole attachments are made “by entities, other than cable television corporations . . . in order to provide various telecommunications services.”<sup>15</sup>

In 1996, Congress amended the Pole Attachment Act of 1978, which gave the Federal Communications Commission (“FCC”) jurisdiction over pole attachments by cable operators in the absence of parallel state regulation.<sup>16</sup> The 1996 revision, codified at Section 224 of the federal Communications Act, broadened FCC authority to “regulate the rates, terms, and conditions for pole attachments” to include attachments by telecommunications carriers.<sup>17</sup> In enacting Section 224, however, Congress acknowledged that states may want to play the primary role in ensuring that utilities provide access to other entities seeking attachment. Thus, a state may certify under the “reverse preemption” provision in Section 224(c) that it regulates rates, terms, and conditions for pole attachments,<sup>18</sup> at which point FCC jurisdiction over pole attachments within the state ceases.

In 1998, this Commission exercised its right of reverse preemption in order to encourage local exchange competition.<sup>19</sup> In D.98-10-058, the Commission certified to the FCC that it would “regulate the rates, terms, and conditions of access to poles, ducts, conduits, and ROW” in California.<sup>20</sup> As with broadband deployment today, competitive success by competitive local

---

<sup>15</sup> *Id.* § 767.7(a)(3).

<sup>16</sup> Pole Attachment Act of 1978, Pub. L. No. 95-234, 92 Stat. 33 (1978).

<sup>17</sup> 47 U.S.C. § 224(b)(1).

<sup>18</sup> *Id.* § 224(c)(1)-(3) (stating that the FCC does not have “jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way . . . for pole attachments in any case where such matters are regulated by a State.” States desiring to regulate pole attachments must file a certification with the FCC and issue “effective rules and regulations implementing the State’s regulatory authority over pole attachments.”).

<sup>19</sup> *See generally* *Order Instituting Rulemaking on the Commission’s Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission’s Own Motion into Competition for Local Exchange Service*, Decision No. 98-10-058, 82 CPUC 2d 510, at 2, 9 (Oct. 22, 1998) (“D.98-10-058”), available at <ftp://ftp.cpuc.ca.gov/telco/Important%20Decisions/D.98-10-058.pdf>.

<sup>20</sup> *Id.* at 9.

carriers (“CLCs”) was not possible without “access to the poles, ducts, conduits, and ROW”<sup>21</sup> owned by ILECs and electric utilities. These infrastructure owners were found to hold a “significant advantage in the control of essential ROW corridors and support structures” and to have the “potential incentive for discriminatory treatment in negotiating terms of access.”<sup>22</sup>

To ensure that “all telecommunications carriers gain access to utility attachments under nondiscriminatory rates, terms, and conditions,” the Commission concluded, pursuant to Section 767.5 of the Public Utilities Code, that all CLCs were “entitled to comparable pole attachment rates” to those paid by CLCs affiliated with or owned by a cable corporation.<sup>23</sup> The Commission also concluded that the rate for cable television pole attachments “should apply where a cable corporation uses its pole attachment to provide telecommunications services.”<sup>24</sup> Thus, per D.98-10-058, “similarly situated” entities can “gain access to the ROW and support structures of the incumbent utilities ... on a first-come, first-served basis.”<sup>25</sup> Access may not be denied to “impede the development of a competitive market and to retain [a] competitive advantage over new entrants.”<sup>26</sup>

In adopting D.98-10-058, the Commission sought to ensure infrastructure access by every type of entity providing terrestrial voice and video services at the time.<sup>27</sup> For all those existing providers, the Commission established uniform attachment rights. The Commission made clear, however, that it did not preclude applying those rules to additional infrastructure owners and

---

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.* at 13.

<sup>23</sup> *Id.* at 54.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 20.

<sup>26</sup> *Id.* The Commission made clear that it was not denying utilities the ability to manage their assets. No party is permitted to attach to the ROW or support structures “without the express written authorization from the utility.” *Id.* Furthermore, the incumbent utility may “restrict access to a particular facility or may place conditions on access for specified reasons relating to safety or engineering reliability.” *Id.*

<sup>27</sup> D.98-10-058 discusses the applicability of the rules to ILECs, CLCs, cable companies, and commercial mobile radio service providers. *See id.* at 15, 20, 22-28.

additional types of providers as market circumstances changed.<sup>28</sup>

**B. The Legislature and This Commission Have Acted to Promote Competitive Parity Among Video Service Providers.**

Competition in video programming distribution developed significantly between the adoption of D.98-10-058 in 1998 and the enactment of DIVCA in 2006. By early 2006, consumers in some areas not only had a choice between “over-the-air broadcast television, a cable service, and at least two DBS providers,” but also could access programming through “emerging technologies, such as digital broadcast spectrum, fiber to the home, or video over the Internet.”<sup>29</sup> The FCC recognized a category of “broadband service providers” (“BSPs”) that were “building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.”<sup>30</sup> By June 2005, 1.4 million subscribers were receiving video programming from BSPs.<sup>31</sup> Telephone companies also had stepped up their video programming distribution presence, and were looking to accelerate “roll out [of] video services using DSL and fiber-based distribution platforms.”<sup>32</sup> By June 2005, 652 communities in 46 states were served at least in part by fiber-to-the-home networks, with 322,700 connected homes.<sup>33</sup>

Thus, by 2006, the potential for competition by non-cable wireline video service providers was tangible, and the promise of their deployments to facilitate video and broadband availability was significant. To “spur increased competition” and “create a uniform regulatory

---

<sup>28</sup> See *id.* at 2 (“We will consider expanding the scope of the rules at a later time to cover additional classes of utilities”); see also *id.* at 27 (deferring consideration of attachments by wireless carriers to another phase of the proceeding).

<sup>29</sup> *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, ¶ 5 (2006) (“Twelfth Annual Report”).

<sup>30</sup> *Id.* ¶ 14.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* ¶ 15.

<sup>33</sup> *Id.*

scheme for all types of video service providers,” the Legislature passed DIVCA into law.<sup>34</sup> DIVCA was directed toward increasing competition in the “cable and video service sector,” providing “consumers with more choice” and “lower prices,” and accelerating “deployment of new communication and broadband technologies” to the benefit of California’s economy.<sup>35</sup> DIVCA’s language evidences intent to eliminate competitive advantages between types of video service providers, whose services were defined “without regard to delivery technology, including Internet protocol [(“IP”)] or other technology.”<sup>36</sup> The Legislature sought to create a “fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.”<sup>37</sup>

Prior to DIVCA, providers of multichannel video services were “subject to different sets of inconsistent regulation.”<sup>38</sup> This Commission only engaged in “incidental regulation” of cable operators, which were largely “regulated by local governments, from [which] they obtained numerous, geographically limited, franchises in exchange for paying fees.”<sup>39</sup> “[T]elephone corporations” that also provided video services were utilities regulated on a generally statewide basis by the Commission and not subject to local regulation.<sup>40</sup> While technological advancements were making it possible for cable companies, telephone companies, and other wireline providers to offer similar multichannel video services, competition between these firms

---

<sup>34</sup> *Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006*, Order Modifying Decision (D.) 07-10-013 and Denying Rehearing of the Decision as Modified, Decision No. 10-07-050, at 8 (2010), available at [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/121494.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/121494.PDF) (“D.10-07-050”).

<sup>35</sup> See Cal. Pub. Util. Code § 5810(a)(1)(B).

<sup>36</sup> See *id.* § 5830(s).

<sup>37</sup> *Id.* § 5810(a)(2)(A).

<sup>38</sup> D.10-07-050 at 8.

<sup>39</sup> *Id.* at 8-9 (citations omitted).

<sup>40</sup> *Id.* (citations omitted).

was constrained by this overlapping and sometimes conflicting regulatory structure.<sup>41</sup> DIVCA eliminated disparities by making the “offering of video services subject to a single set of rules.”<sup>42</sup>

This Commission became the “sole franchising authority” for video service providers in California, dismantling the previous system.<sup>43</sup> The Commission’s role under DIVCA, however, goes beyond reviewing franchise applications to affirmatively enabling achievement of DIVCA’s statutory objectives. DIVCA provides the Commission with a “legislative mandate” to ensure that its “policies do not deter network investment, and, instead, promote such investment.”<sup>44</sup> Development of new technologies, high-speed services, and infrastructure deployment should be encouraged.<sup>45</sup>

In DIVCA, the Legislature granted video service providers the ability to obtain statewide franchises and to access the public ROW, even though they are not classified as utilities.<sup>46</sup> DIVCA did not expressly grant video service providers automatic attachment rights to utility infrastructure. Providing video service providers with access to such infrastructure and utility ROW, however, is consistent with the Commission’s rules established in D.98-10-058. This is especially true because non-cable video service providers attach to poles in a manner “identical in all relevant respects” to attachments by traditional cable corporations and telecommunications

---

<sup>41</sup> See *id.* at 9 (citing Sen. Rules Com., Off. Of Sen. Floor Analyses, 3d reading analysis of Assem. Bill 2987 (2005-2006 Reg. Sess.) as Amended Aug. 28, 2006, at 2).

<sup>42</sup> *Id.* at 9 (citing Cal. Pub. Util. Code, § 5970(g) as an exemplar).

<sup>43</sup> See Cal. Pub. Util. Code § 5840(a).

<sup>44</sup> *Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services*, Decision Adopting Process Governing Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services, Decision No. 08-11-033, at 13 (2008), available at [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/93730.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/93730.PDF).

<sup>45</sup> *Order Instituting Rulemaking into the Review of the California High Cost Fund B Program*, Interim Opinion Implementing California Advanced Services Fund, Decision No., 07-12-054, at 18 (2007), available at [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/76947.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/76947.PDF) (explaining certain requirements in DIVCA for filing subscribership data).

<sup>46</sup> Cal. Pub. Util. Code § 5840(a).

carriers.<sup>47</sup> Specifically, video service providers attach fiber or coaxial cables—exactly the type of wireline facilities for which the Commission granted attachment rights in D.98-10-058.<sup>48</sup>

Since DIVCA’s passage, non-traditional video service providers have sought to provide service in markets around the country. The need for access to utility infrastructure, however, has slowed and limited that entry. Google Fiber’s experience illustrates the problem. In jurisdictions that do not provide for joint use or pole attachment rights, Google Fiber has faced uncertainties about the timing of its rollout of competitive, residential fiber-to-the home broadband and video services due to lack of or delayed access to poles, ducts, conduits at reasonable and nondiscriminatory terms and conditions.<sup>49</sup> Obtaining pole attachment rights slowed Google Fiber’s deployments in both Kansas City and Austin, and continues to hamper Google Fiber’s ability to build in potential new markets.<sup>50</sup> Some incumbents have declined to even begin pole attachment negotiations with Google Fiber, and one of these came to the table only after many months of effort by Google Fiber.<sup>51</sup>

Google Fiber’s situation is not unique; other potential entrants face the same obstacles. “Exorbitant pricing for make-ready, a very slow or uncertain schedule, or, in the worst case, a refusal to allow attachment” has been described a “‘show-stopper’ problem” that could delay or halt network deployment.<sup>52</sup> The *National Broadband Plan* estimates that the “expense of obtaining permits and leasing pole attachments and [ROW] can amount to 20% of the cost of

---

<sup>47</sup> D.98-10-058, at Conclusion of Law No. 25.

<sup>48</sup> *Id.* at Conclusion of Law No. 30.

<sup>49</sup> Toccalino Declaration ¶ 6.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See CTCNet, *Gigabit Communities: Technical Strategies for Facilitating Public or Private Broadband Construction in Your Community* at 45, available at <http://www.ctcnet.us/wp-content/uploads/2014/01/GigabitCommunities.pdf>.

fiber optic deployment.”<sup>53</sup> Restrictions on pole access can cause deployment costs to skyrocket, particularly if a provider is forced to install its own poles or place its cables underground.<sup>54</sup>

According to the Fiber to the Home Council, new fiber optic network utilizing existing poles is estimated to “cost in the range of \$2 to \$4 per linear foot,” but installing duplicate pole infrastructure can cost “ten times as much.”<sup>55</sup> Thus, it has become clear that the infrastructure rights afforded telecommunications and cable corporations under D.98-10-058 and DIVCA are critical to implementing the pro-competition and pro-consumer goals of DIVCA—and extending them to all state franchised video service providers likewise is essential to achieve those goals.

Clarification that all video service providers have the right to nondiscriminatory access to poles, ducts, conduits, and ROW will expedite broadband availability consistent with DIVCA.<sup>56</sup> There is no reason why pole attachment protections should be limited to traditional cable operators. Other wireline providers like Google Fiber provide Commission-franchised video services and broadband Internet access in competition with these traditional operators.<sup>57</sup> To establish and expand their networks, these new providers require exactly the same access to existing infrastructure as traditional operators.<sup>58</sup> Clarifying that all franchised video service providers have pole attachment rights is supported by all the same reasons that justify granting of rights to cable corporations, and will bolster the broadband-specific policies and competitive parity encouraged by DIVCA.

---

<sup>53</sup> FCC, *Connecting America: The National Broadband Plan*, Mar. 16, 2010, at 109, available at <http://www.broadband.gov/plan/> (“National Broadband Plan”).

<sup>54</sup> Toccalino Declaration ¶ 4.

<sup>55</sup> Fiber To The Home Council, *State and Local Government Role in Facilitating Access to Poles, Ducts, and Conduits in Public Rights-of-Way*, Aug. 2013, at 1, available at <http://www.ftthcouncil.org/p/cm/ld/fid=33>.

<sup>56</sup> See Toccalino Declaration ¶¶ 3, 9.

<sup>57</sup> See *id.* ¶¶ 8-9.

<sup>58</sup> See *id.*

### C. Expanded Access to Poles in Rights-of-Way Will Promote Important Policy Objectives.

Clarifying that non-cable video service providers have access to utilities' existing infrastructure will expedite deployment of competitive video and broadband networks, furthering national and state priorities. Broadband and video services are “increasingly important to active participation in our modern-day economy and society.”<sup>59</sup> As recognized in the FCC’s *National Broadband Plan*, “[u]ntil recently, not having broadband was an inconvenience. Now, broadband is essential to opportunity and citizenship.”<sup>60</sup> Access to broadband is a “fundamental aspect of the infrastructure required to educate [California’s] youth, create jobs, promote public safety, improve [Californians’] standard of living, and deliver essential services like health care.”<sup>61</sup> Lack of access to broadband means that “communication is limited, innovation is stifled, productivity decreases, and quality of life is depressed. With broadband, the potential for economic development is an order of magnitude greater.”<sup>62</sup>

Building broadband networks, however, is time-consuming and expensive, making broadband construction the “great infrastructure challenge of the early 21st century.”<sup>63</sup> In particular, as both the FCC and AT&T have observed, inability to gain ‘reliable, timely, and affordable access to physical infrastructure—particularly utility poles—is often a significant barrier’ to deploying wireline services.<sup>64</sup> The economics of broadband network deployment

---

<sup>59</sup> D.07-03-014 at 55.

<sup>60</sup> *National Broadband Plan* at 5.

<sup>61</sup> California Broadband Task Force, *The State of Connectivity: Building Innovation Through Broadband*, Jan. 2008, at 11 (“*Broadband Task Force Report*”), available at [http://www.cio.ca.gov/broadband/pdf/CBTF\\_FINAL\\_Report.pdf](http://www.cio.ca.gov/broadband/pdf/CBTF_FINAL_Report.pdf).

<sup>62</sup> *Id.* at 13.

<sup>63</sup> *National Broadband Plan* at XI.

<sup>64</sup> AT&T Mobility, *Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5*, Petition No. 13-12-009, at 8 (filed Dec. 3, 2013) (“AT&T Petition”) (citing *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, ¶ 3 (2011) (“2011 FCC Pole Attachment Order”)).

depend “significantly on the costs that service providers incur to access conduits, ducts, poles and [ROW] on public and private lands.”<sup>65</sup>

Market forces do not guarantee video service providers reasonable access to available space on existing utility infrastructure.<sup>66</sup> The incumbent status of ILECs and electric utilities may create the “potential incentive for discriminatory treatment in negotiating terms of access.”<sup>67</sup> Barring or delaying attachment to existing infrastructure may occur “simply to impede the development of a competitive market and to retain... [a] competitive advantage over new entrants.”<sup>68</sup> Denial of access on reasonable terms can delay or jeopardize a network build-out.<sup>69</sup> As noted above, Google has experienced the difficulty of building a broadband network without pole attachment rights.<sup>70</sup>

Clarifying that all franchised video service providers have the right to attach wireline facilities to poles, ducts, and conduit owned by ILECs and electric utilities raises no new technical or policy concerns.<sup>71</sup> Video service providers such as Google Fiber deploy their wireline networks in the same manner as cable corporations, in the same “communications space” on poles, and using the same materials (generally, fiber-optic and coaxial cable).<sup>72</sup>

---

<sup>65</sup> *National Broadband Plan* at 109.

<sup>66</sup> Toccalino Declaration ¶¶ 3, 6.

<sup>67</sup> D.98-10-058 at 13.

<sup>68</sup> *Id.* at 20.

<sup>69</sup> Toccalino Declaration ¶ 3.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* ¶¶ 8-9.

<sup>72</sup> *See id.* AT&T currently is petitioning this Commission to allow wireless carriers to receive the benefits of the pole access rules, and Google is in favor of this proposal. *See generally* AT&T Petition; Google Inc., *Response of Google Inc. to AT&T Mobility’s Petition for Expansion of Pole Attachment Protections*, Petition No. 13-12-009 (filed Jan. 16, 2014). The clarification request herein, however, poses none of the asserted safety issues raised in response to the AT&T Petition. Unlike the conventional attachments at issue here, wireless attachments “have different space requirements” than wireline attachments, and the “work involved in pole-top access raises special safety concerns.” *See* D.98-10-058 at 27; *see also generally, e.g.,* Safety & Enforcement Division, *Response of the Safety & Enforcement Division to Petition To Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5*, Petition No. 13-12-009 (filed Jan. 16, 2014); San Diego Gas & Electric Company, Pacific Gas and

Likewise, just as with traditional cable corporations, providing pole attachment protections to these new providers would speed the delivery of new and improved services to consumers.<sup>73</sup>

The federal Pole Attachment Act of 1978 is one of the most important reasons why so many American homes today have access to cable television. Between 1979 and 1984, the number of cable television systems in the United States increased by 50% and cable subscribership more than doubled.<sup>74</sup> Revisions to the FCC's rules in 2011 to reduce disparities between

telecommunications and cable pole attachment rates and to extend attachment rights to wireless carriers were similarly adopted to "promote competition and increase the availability of robust, affordable telecommunications and advanced services to consumers throughout the nation."<sup>75</sup>

There is every reason to expect that clarification of attachment rights for non-cable video service providers will have a similar effect in California.

### **III. Google Fiber Could Not Have Participated in the DIVCA Proceeding Or Filed This Petition Within One Year of the Effective Date of D.07-03-014.**

After passage of DIVCA by the California Legislature in 2006, this Commission opened R.06-010-005—the proceeding in which D.07-03-014 was issued—on October 5, 2006.<sup>76</sup>

Google Fiber was incorporated in June 2010 and had no predecessor. Thus, it was unable to

---

Electric Company, Southern California Edison Company, *Reply Comments of San Diego Gas & Electric Company (U 902-E), Pacific Gas and Electric Company (U 39-E), and Southern California Edison Company to AT&T Mobility's Petition To Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5*, Petition No. 13-12-009 (filed Jan. 27, 2014).

<sup>73</sup> See Tocalino Declaration ¶ 3.

<sup>74</sup> See U.S. Dept. of Commerce, Statistical Abstract of the United States 1996, at 567, Chart 890 (1996), available at <http://tinyurl.com/kvnfeot> (reporting that in 1979, there were 4,150 cable systems in the United States with 14.1 million subscribers; in 1984, there were 6,250 cable systems with 30 million subscribers).

<sup>75</sup> See 2011 FCC Pole Attachment Order ¶ 1.

<sup>76</sup> See generally *Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006*, Order Instituting Rulemaking, R.06-10-005 (2006), available at [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/60522.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/60522.PDF).

participate in R.06-10-005.<sup>77</sup>

D.07-03-014 was issued on March 1, 2007. But, it was not until March 2011 that Google Fiber announced its intention to deploy its first fiber-to-the-home network in the Kansas City metropolitan area.<sup>78</sup> Until initiating that deployment, Google Fiber did not face uncertainties about the timing and extent of its rollout of competitive, residential fiber-to-the home broadband and video services due to lack of or delayed access to poles, ducts, and conduits at reasonable and nondiscriminatory terms and conditions.<sup>79</sup> And, while Google Fiber holds a state video franchise in California,<sup>80</sup> it did not develop its interest in offering commercial service in communities located in California, including Mountain View, Palo Alto, Santa Clara, San Jose, and Sunnyvale, until February 2014.<sup>81</sup> Therefore, Google Fiber could not have brought this Petition within one year of the effective date of D.07-03-014.

#### **IV. The Commission Should Modify D.07-03-014 to Make Clear That All Video Service Providers Have Equal Access to Poles, Ducts, Conduits, and Rights-of-Way.**

Google Fiber respectfully requests that the Commission modify D.07-03-014 to clarify, consistent with DIVCA and Section 761 of the Public Utilities Code, that all video service providers franchised by this Commission are protected by the rules that govern the rates, terms, and conditions of access to poles, ducts, conduits, and rights-of-way owned by ILECs and electric utilities. As required by Rule 16.4(b), Google Fiber is submitting proposed changes to D.07-03-014 and the Commission's rules as Attachment B to this Petition.

---

<sup>77</sup> Toccalino Declaration ¶ 2.

<sup>78</sup> Google Fiber Blog, *Ultra High-Speed Broadband Is Coming To Kansas City, Kansas* (Mar. 30, 2011), available at [http://googlefiberblog.blogspot.com/2011\\_03\\_01\\_archive.html](http://googlefiberblog.blogspot.com/2011_03_01_archive.html).

<sup>79</sup> Toccalino Declaration ¶ 6.

<sup>80</sup> See Letter to Joseph S. Faber, Senior Counsel, from Paul Clanon, Executive Director, State of California Public Utilities Commission (Aug. 26, 2011) (issuing a state franchise to Google Fiber California LLC), available at [ftp://ftp.cpuc.ca.gov/VideoFranchiseTemplate/Google Fiber California, LLC/Google Certificate initial.pdf](ftp://ftp.cpuc.ca.gov/VideoFranchiseTemplate/Google%20Fiber%20California,LLC/Google%20Certificate%20initial.pdf).

<sup>81</sup> Google Fiber Blog, *Exploring New Cities for Google Fiber*, Feb. 19, 2014, available at <http://googlefiberblog.blogspot.com/2014/02/exploring-new-cities-for-google-fiber.html>.

Dated and signed: July 3, 2014 in Walnut Creek, CA.

/s/ Anita Taff-Rice

Austin Schlick  
Megan Anne Stull  
Google Inc.  
25 Massachusetts Avenue NW  
Ninth Floor  
Washington, DC 20001

Anita Taff-Rice  
iCommLaw  
1547 Palos Verdes  
Suite 298  
Walnut Creek, CA 94597  
(415) 699-7885  
anita@icommlaw.com

*Attorney for Google Fiber Inc.*